IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9933 OF 2004

M/s. Puritan Services Pvt. Ltd..... Petitioner.

Versus

Shreekrishna Vasudev Mone & Ors..... Respondents.

Mr. A. A. Kumbhakoni with Mr. S. S. Tambekar
for the Petitioner.

Mr. G. S. Godbole for Respondent No.1.

Mr. Lokesh i/by M/s. G. S. Hegde & Associates
for Respondent No.3.

None appears for Respondent No.2, though served.

CORAM : S. A. BOBDE, J.

DATED : 9TH JUNE, 2005.

P.C.:

Rule.

2. Learned Counsel for Respondent No.1 and Respondent No.3 appear and waive service of Rule on behalf of the respective Respondents.

3. Rule made returnable forthwith and heard by consent.

4. The Petitioner has filed a suit for specific performance of a contract for purchase of immovable property entered into with Respondent No.1 Shreekrishna. In this suit, the Petitioner moved an application for amendment since according to the Petitioner pendente lite the property was sold by Shreekrishna to the proposed Defendant No.4 i.e. M/s. Ashapura Developers Pvt. Ltd. and for inserting averments in that regard. By the introduction of the proposed amendment the Petitioner also sought cancellation of the transaction between Shreekrishna and the proposed Defendant No.4 M/s. Ashapura Developers Pvt. Ltd. in respect of the suit property.

5. The trial Court has rejected the application for amendment inter alia on the ground that the order 1 Rule 10 was not specifically invoked for joinder of M/s. Ashapura Developers Pvt. Ltd. Further, that there was a delay in moving this application. Lastly, the trial Court has rejected the proposed amendment on the ground that the validity of the suit agreement itself has not yet been decided. Mr. Godbole, learned Counsel for Respondent No.1 strongly supported

the order of the trial Court. I, however, find that none of the reasons given by the learned trial Court appear to justify the refusal of such an amendment, particularly when it would lead to a multiplicity of proceedings. Merely because a specific provision of law is not invoked, the application is not liable to be dismissed on that ground alone if there is power in the Court to do what is sought by the application. Moreover, if the agreement between the Plaintiff and the original Defendants is not found to be valid then in any case no question regarding granting relief against the subsequent purchaser would arise. On the other hand, if the agreement is held to be valid, as observed earlier, it would lead to a multiplicity of proceedings. As regards the delay, it appears that the Plaintiff has moved the application on coming to know of the transaction between the original Defendants and the proposed Defendant. Therefore, on the balance, in my view, the amendment ought to have been allowed.

6. In the circumstances, Rule made absolute. Delay condoned. Amendment is allowed. Writ Petition is disposed of accordingly.

Sd/-

(S. A. BOBDE, J.)